

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7434

BILL NUMBER: SB 464

NOTE PREPARED: Feb 7, 2011

BILL AMENDED: Feb 7, 2011

SUBJECT: Depository Rule.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill defines "public servant", and substitutes "public servants" for "public officers" with respect to certain duties and obligations concerning public funds.

It makes knowingly or intentionally failing to properly deposit public funds a Class A misdemeanor, and increases the penalty to a Class D felony if the amount involved is at least \$750 and to a Class C felony if the amount involved is at least \$50,000. (The offense is currently a Class B felony.)

It repeals a conflicting provision.

Effective Date: July 1, 2011.

Explanation of State Expenditures: The bill will have indeterminate, but potentially reduced, incarceration costs. The bill reduces the penalty for failing to properly deposit public funds by reducing the penalty from a Class B felony to a Class A misdemeanor, Class D felony, or Class C felony based on the value of the offense. However, the pool of potential offenders is increased to the extent that the definition of public servant includes more people than the term public official, including uncompensated persons who act in an advisory capacity. [Between 2006 and 2009, no one has been admitted to a state correctional facility for these offenses.]

If an offender is convicted of a misdemeanor rather than a felony, the convicted offender would generally be incarcerated in a county jail rather than a state prison. State expenditures also could decrease if offenders are incarcerated for less time in a state prison. A Class B felony is punishable by a prison term ranging from 6 to 20 years, depending upon mitigating and aggravating circumstances. A Class D felony is punishable by

a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, and a Class C felony is punishable by a prison term ranging from 2 to 8 years.

Fewer offenders could mean reduced costs to the Department of Correction (DOC). The average expenditure to house an adult offender was \$19,307 in FY 2010. (This does not include the cost of new construction.) If offenders can be housed in existing facilities, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months, and for all Class C felony offenders it is approximately two years.

Explanation of State Revenues: The bill would increase the pool of potential offenders by changing the subject of the offense from a public official to a public servant. This change also applies to the Class B misdemeanor for failing to perform any duty imposed on the person by statute concerning the investment of public funds.

If an offender is convicted of a Class A misdemeanor rather than a Class B felony, revenue to both the Common School Fund would decrease. However, there would be no difference in the fine revenue if the crime were prosecuted as a Class D or Class C felony because the maximum fine for all felony offenses is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000, and for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If additional cases are filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: A Class A misdemeanor is punishable by up to one year in jail, and a Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: No additional revenues would be expected since the court fees are \$120 for all felony and misdemeanor offenses.

However, if additional court actions occur and a guilty verdict is entered due to the enlarged pool of potential offenders, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

Fiscal Analyst: Karen Firestone, 317-234-2106.